

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,

v.

ERIC TYRONE WEEMS,

Defendant.

CRIMINAL ACTION NO.
1:21-cr-00085-WMR-JSA-1

ORDER

Count Three of Defendant’s indictment alleges that Defendant engaged in distribution of controlled substances, including distribution of at least five grams of methamphetamine and a detectable amount of heroin. [Doc. 66 at 1.] Defendant moved to dismiss Count Three and argued that the Count is duplicitous because it impermissibly charges the distribution of two different drugs in a single count. [*Id.*; *see* Doc. 51.]

In a report and recommendation (“R&R”), the Magistrate Judge recommends denying Defendant’s motion to dismiss. [Doc. 66 at 4.] He found that “Count Three alleges a single ‘act’ of distribution, which ‘said act’ happened to involve more than one illegal substance.” [*Id.* at 2.] “[I]t is not generally duplicitous to allege such a transaction in a single count, simply because the transaction involved two separate types [of] narcotics.” [*Id.*] The Magistrate Judge acknowledged that “there could


be [a] risk of confusion as to whether the jury has reached unanimity as to the particular type(s) and amount(s) of drugs being sold,” particularly when that issue is relevant to any applicable sentence. [*Id.* at 2–3.] However, the Magistrate Judge noted that “[s]uch ambiguity” can be “addressed by means other than dismissal, such as through appropriate jury charges and a special verdict form.” [*Id.* at 3.] The Government “concedes that a special verdict form would be necessary given the different potential sentences applicable based on the type and quantities of drugs at issue.” [*Id.*]

In reviewing the R&R, this Court makes a “de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). If no party files an objection, the Court reviews the R&R for clear error. *See, e.g., Hawbaker v. Dix*, 499 F. Supp. 3d 1244, 1246 & n.1 (N.D. Ga. 2020). Here, no party has filed an objection to the R&R, so clear-error review applies.

After considering the R&R and reviewing it for clear error, the Court hereby receives the R&R with approval and adopts its recommendation as the opinion and order of the Court. Accordingly, Defendant’s motion to dismiss [Doc. 51] is

DENIED.

IT IS SO ORDERED, this
15th day of February, 2022.


WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE